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FINDINGS OF FACT

I

Appellants, Mr. and Mrs. Peter Stuart Optekar, appeal from the denial by Ecology of their application to appropriate public ground water. The denial was made under date of June 2, 1993. The denial was received by the Optekars on June 4, 1993

II

Ecology's cover letter accompanying the denial states:

The enclosed Report of Examination constitutes the department's determination and order for the above referenced application.

You have the right to obtain review of this order. Request for review must be made, within thirty (30) days of receipt of this order to the Washington Pollution Control Hearings Board, PO Box

Concurrently, a copy of the request must be sent to the Department of Ecology, PO Box 47600, Olympia, Washington 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder " (Emphasis added.)

III

The Optekars next submitted a letter to Ecology stating that they contested the denial. In reply, Mr. Tim Reiersen of the Ecology office in Yakima sent a letter dated June 25, 1993, which stated:

"Concerning meetings to discuss the decision, it would be best if you would propose a specific agenda so that we can first confer with our attorney. I apologize for the formality, but it is in the best interest of both parties considering that a formal decision has been issued, you have indicated that you contest the decision and your option for appeal is currently still open."

1
2 IV

3 The 30 day period for appeal of the denial to the Pollution Control Hearings Board
4 expired on July 6, 1993. The Optekar appeal to the Board was filed on August 23, 1993, or
5 48 days after expiration of the appeal period. It was filed pro se.

6 V

7 The Optekars received Mr. Reiersen's letter 6 to 8 days before expiration of the appeal
8 period. The Optekars maintain that:

9 *Because Mr. Reiersen acknowledges we were contesting the*
10 *decision, the appeal period was still open and suggested we*
11 *submit an agenda for review by DOE's attorneys before further*
12 *meetings, my husband and I understood the appeal period*
remained open so long as we were discussing the matter with
DOE representatives.

13 CONCLUSIONS OF LAW
14

15 I

16 The period for filing an appeal from Ecology's action is established by RCW
17 43.21B.310 which provides, in pertinent part:

18 *Any order issued by the department [of ecology] ... may be*
19 *appealed to the pollution control hearings board if the appeal is*
20 *filed with the board and served on the department ... within thirty*
days after receipt of the order. Except [for section not applicable
here] this is the exclusive means of appeal of such an order.

21 II

22 This appeal was filed with the Pollution Control Hearings Board more than 30 days
23 after its receipt. Ecology has moved to dismiss. Appellants cite authority in opposition
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III

The authority cited by appellants is inapposite. In Scully v Department of Employment Security, 42 Wn. App 596, 712 P 2d 870 (1986), a statutory time period for appeal was augmented by statutory language providing for waiver of the time limit "for good cause shown." RCW 50.32.075 There is no comparable statutory waiver here. Similarly, Bach v Kittitas County and United Pentecostal Church, SHB No. 92-32 (1993) construed the relevant action commencing the 30 day period for appeal in cases before the Shorelines Hearings Board That relevant action differs from the "receipt of the order" standard at issue here. Moreover, Mr Reiersen's June 25 letter in this case is neither a separate order nor a component of the true order issued by Ecology on June 2 and received by the Optekars on June 4, 1993.

IV

Estoppel cannot be used for the purpose of conferring subject matter jurisdiction upon a court. Rust v WWSC, 11 Wn App 410, 418, 523 P 2d 204 (1974) Nor upon an administrative tribunal. State v Higher Education Personnel Board, 16 Wn App, 642, 646, 558 P 2d 1364 (1976) A time limitation fixed by statute for appeal is mandatory and jurisdictional Rust, supra, at p 415 and cases cited therein The Pollution Control Hearings Board is without jurisdiction to hear an untimely appeal, and estoppel cannot create an exception to the time limit for appeal. Meridian Aggregates Co v Ecology, PCHB No 88-149 (1989)

V

Even were estoppel available to create an exception to the time limit for appeal, this case would not support such estoppel An essential element of estoppel is that one must

1 "reasonably" rely upon a statement to one's detriment. Leonard v Washington Employers,
2 Inc., 77 Wn.2d 271, 280-81, 461 P.2d 538 (1969) While the Optekars' reliance on
3 the Reierson letter as extending the time for appeal is no doubt sincere, it is nevertheless not
4 reasonable. The Reierson letter states only that, "... your option for appeal is currently still
5 open." When written and received that statement was true. It was also consistent with the
6 statutory requirement for timely appeal to the Board. It was not reasonable to suppose that the
7 appeal period would remain open so long as discussions continued with Mr. Reierson
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9 VI

10 This appeal is untimely and must be dismissed.

11 ORDER

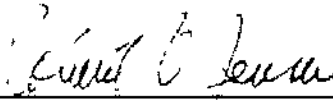
12 The Department of Ecology's Motion to Dismiss is granted.

13 DONE at Lacey, WA, this 24th day of February, 1994.

14 

15 HONORABLE WILLIAM A. HARRISON
16 Administrative Appeals Judge, Presiding

17 POLLUTION CONTROL HEARINGS BOARD

18 

19 ROBERT V. JENSEN, Chairman

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21 RICHARD C. KELLEY, Member
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